

6 CHAIRMAN KHOURI: This is our third
7 panel for today, our Ports and Terminals Panel.
8 Madame Secretary, could you get us under way?

9 MS. DICKON: Certainly. This afternoon
10 our final panel will begin with Mr. Edward DeNike,
11 Mr. John Crowley, and Mr. John Atkins.

12 CHAIRMAN KHOURI: Proceed, sir. Thank
13 you.

14 MR. DeNIKE: Good afternoon,
15 Commissioner Khouri, Commissioner Dye, and
16 Commissioner Maffei. Can you hear me? My name is
17 Edward DeNike, I'm President of SSA Containers.
18 SSA Containers is a division of SSA Marine, which
19 is, basically, the West Coast container
20 operations. We have eight large container
21 terminals, up and down from Washington through
22 California. We are the largest employer on the

1 West Coast; we pretty much have about 25 percent
2 of the man hours on the West Coast.

3 I felt it was important to come here and
4 talk to you about this subject because it's very
5 important to us, as what we believe is the
6 survival of what we are trying to do as a terminal
7 operator. We have to understand that terminal
8 operators, particularly on the West Coast, pay an
9 immense amount of money to port authorities for
10 their acreage, that are two- to 300,000 on an acre
11 is normal.

12 We had a situation in Seattle where, for
13 years there was no demurrage being billed, because
14 there were five or six terminals in that port, and
15 most of the terminals did not want to bill
16 demurrage because they were, quite frankly, owned
17 by carriers, and it was a business decision not to
18 bill demurrage.

19 So, if we wanted to bill demurrage,
20 which we tried, we got criticized by our customers
21 because those terminals that were servicing their
22 competition -- or our competition, were not

1 charging demurrage, so we could not charge
2 demurrage for many years.

3 Now, we are at a point where we had one
4 large shipper that had 800 containers sitting on
5 our dock for 75 days, and we couldn't get them to
6 move them off our docks, and it cost us several
7 hundred thousand dollars, that we were paying to
8 the port that -- you know, that that shipper, or
9 that importer did not have to a dime to keep those
10 containers at our facility.

11 In the last couple of years, three or
12 four of the operators went out of business, there
13 are now only two of us really left in Seattle, and
14 we are both doing demurrage, and the cargo is
15 moving the way it should move.

16 I think it's important, in listening to
17 the testimony this morning, it became obviously to
18 me that it's important that the Commission really
19 understand these terms of what we are talking
20 about with respect to demurrage, per diem, and
21 detention.

22 In my opinion, most of this problem, or

1 these concerns that you're looking at are per diem
2 and detention, they are not demurrage. And the
3 terminal operator, who is charged to collect the
4 detention and some of the container demurrage, and
5 chassis demurrage, is thought to be the bad guy
6 here, but we are only collecting it because our
7 customer is asking us to collect it.

8 When we collect demurrage, a very small
9 percentage of that demurrage, less than 10
10 percent, is actually demurrage that is attributed
11 to the docks; 90 percent of the demurrage that we
12 collect is carrier demurrage, that we are told, we
13 are asked to collect the demurrage as part, at the
14 same time we collect our dock demurrage.

15 When we look at free time, there was a
16 comment this morning that terminal operators
17 sometimes, there was a difference between when
18 they started free time, when they started
19 demurrage and, you know, it's hard to understand
20 from terminal to terminal, at least that's what I
21 understood. I don't think that's accurate.

22 At least on the West Coast, all

1 terminals are governed by a port tariff. Port
2 tariffs are different in each port, but the
3 terminal operator does not have the right, or
4 responsibility to determine when free time starts
5 or ends, and demurrage starts, it s all
6 tariff-related that we have to follow.

7 When we look at demurrage, for us as a
8 terminal operator, we honestly believe that if the
9 shipper or the BCO is not responsible for not
10 picking up their container in free time, that it's
11 basically our fault. We do not bill demurrage; we
12 waive demurrage 100 percent of the time. And I
13 have never got a complaint from anybody who says
14 that that's not a fact.

15 Our general managers who run the
16 terminals have complete authority to waiver
17 demurrage. But only waiver our demurrage,
18 terminal demurrage, they don't have authority to
19 waiver steamship company demurrage. And sometimes
20 we'll be willing to waiver our demurrage, but for
21 some reason or not, these steamship companies will
22 not be willing to waiver their demurrage.

1 So then, it looks as though, to the
2 trucker or to the BCO, that it's the terminal
3 operator that's not waiving the demurrage, so then
4 it looks as though, to the trucker or to the BCO,
5 that it's the terminal operator that's not waiving
6 the demurrage. Then they don't -- I don't think
7 the industry understands, you know, the difference
8 between, again, what the demurrage is for a
9 terminal operator, and how it's collected, and who
10 gets that revenue.

11 You know, when we talk about it I
12 noticed that there were some comments that the
13 petitioner was saying, that it was not the
14 shipper's problem, they shouldn't be paying
15 demurrage, I mean, that's very difficult to talk
16 about in a general discussion. Somebody can say,
17 which they have to us: there was an accident on
18 the freeway, it's not my fault. Well, you know,
19 we don't know there was an accident on the
20 freeway, and even if there wasn't that's not --
21 you know, that's not our responsibility.

22 You have to understand that a terminal

1 operator, as much as the steamship companies are
2 competing together or against -- with each other,
3 the industry is tough for all of us, including
4 terminal operators. We only make our money by
5 volume. We make no money by containers staying on
6 the dock. We have to move volume through the
7 terminals, to survive. And that's why a lot of
8 terminal operators have not been able to survive.

9 You know, they haven't been able to get
10 the volume. When containers stay on the terminal
11 and don't move, they take the spot of another
12 container that could come off of the ship, or go
13 on a ship. And that's what we want. We want that
14 container gone off and delivered. 95 percent of
15 demurrage that we have is import demurrage, very
16 little export demurrage. We have to understand
17 that too.

18 In export demurrage terminal operators,
19 at least for the most part, do not bill BCOs, they
20 do not bill truckers. Terminals bill the
21 steamship company for all export demurrage, but
22 I'm talking about cargo demurrage, dock demurrage,

1 and the reason being, is that most terminal
2 operators, do not receive cargo for a ship before
3 free time. So, if a ship is coming in on a
4 certain day, you get four days, or whatever it is,
5 we will not receive containers before that free
6 time.

7 So that's controlled there. The only
8 time demurrage is billed is if that ship is
9 delayed. The ship is due to come in the first of
10 the month, we receive for four days, it's delayed
11 and it doesn't come in until the fourth or the
12 third, and then there's demurrage, we bill the
13 steamship company, and then it's up to the
14 steamship company to decide whether they want to
15 bill the exporter or not. And I believe in most
16 cases they don't.

17 Finally, we look at some people who have
18 talked ways that we can possibly help the delivery
19 process, the appointment system, you know, we
20 believe strongly that the appointment system on
21 imports, which is 95 percent of the problem, is
22 what needs to be done, within our operation, we

1 don't want appointments on anything but imports.

2 And the reason being is that we can push
3 out a lot of trucks on empties in, and empties
4 out, and exports in, we do not want appointments
5 there, because if we do it will cost more labor
6 because we'll have to extend that time for
7 receiving and delivering empties, and exports, and
8 it's just not a problem today, at least that's not
9 what we think.

10 The industry has talked about a "peel
11 off" mode of operation, that is to separate
12 containers off the ship into certain areas that
13 can be delivered in a random access. If that can
14 ever be done, that would work and would help the
15 delivery process. We are doing that today a lot,
16 but we are doing it with big shippers.

17 And we haven't been able to get shippers
18 to work with other shippers, and truckers to work
19 with other truckers to be able to go on a peel off
20 pile where anybody can pick up any containers.
21 But the big shippers, we do this, we do separate
22 the containers out of the normal delivery runs,

1 and we put equipment there, and we -- those peel
2 off process, containers can go maybe five times as
3 fast as a normal process.

4 We can do maybe 40, 50 an hour as
5 opposed to a normal delivery process under what is
6 called the transtainer of about 8 or 9 an hour.
7 So, that is something that could be considered as
8 a solution. And lastly, it concerns that, quite
9 frankly, if I may say that you're going to come up
10 with some rules that are mainly trying to point at
11 a problem that is more detention and per diem,
12 than it is terminal demurrage that's going to
13 affect us, and that's going to force us to keep
14 containers on the terminal longer than what w4
15 want them to be.

16 And we want to try to clear that up to
17 you, and to explain the difference, so that if you
18 do come up with any rule through any petition,
19 that you understand that there's really, you know,
20 you have to understand the terms between
21 demurrage, per diem and detention. You can't put
22 it all in one package. Thank you.

1 MR. CROWLEY: Chairman Khouri,
2 Commissioners Dye and Maffei, thank you for the
3 opportunity to appear before the Commission on
4 this important subject. I'm President of the
5 National Association of Waterfront Employers,
6 NAWE, which is the voice in Washington, of the
7 marine terminal operators and stevedore, otherwise
8 referred to as the MTO or operator.

9 The petitioner has asked you to initiate
10 a rulemaking to adopt a policy on this subject.
11 It would dictate terms as to when and by how much
12 operators are compensated. The petitioner has
13 alleged the policy is necessary because current
14 practices are unfair and unreasonable.

15 Based upon my interviews with operators
16 on all coasts, including both members and
17 non-members of NAWA, it is our position that
18 current practices work fairly and reasonably, that
19 the proposed policy would be complex, and damaging
20 to the productivity of our nation's ports. It
21 would impose a regulatory solution when the
22 commercial one is working.

1 The free time in demurrage and detention
2 charges applicable to cargo, are the product of a
3 series of negotiations between sophisticated
4 commercial enterprises, the port and the MTO, the
5 MTO and the ocean carrier, and the ocean carrier
6 and its customer. And negotiations take into
7 account the risk associated with the international
8 transportation of cargo, including weather, port
9 and terminal productivity, customs requirements
10 and many others.

11 The results vary based upon bargaining
12 power and local conditions. The proposed
13 regulatory policy would ignore the market factors,
14 reduce flexibility and unintentionally create
15 winners and losers. I will illustrate the
16 differences between the status quo, and the
17 proposed policy using examples evolving a
18 weather-related port shutdown and a single box
19 failure.

20 Our ports recently experience hurricane
21 and severe weather closures. These events varied
22 in duration and impacts, the general response to

1 each weather-related event was to extend free
2 time, as long as the cargo was in the grace
3 period. This was a fair a reasonable concession
4 of the cargo interests, and the perspective rule
5 will not provide improvement.

6 If a weather event occurred after free
7 time, and during the demurrage period, the cargo
8 interest is generally granted an extension of free
9 time for the duration of the closure, but required
10 to pay the detention and demurrage for the days in
11 between free time and the event causing inability.

12 The multi-day Hurricane Harvey in
13 Houston, created such community challenges that
14 greater concessions were extended even though
15 terminal operation returned to normal. This
16 exceptional response was authorized by the
17 Governing Board of the port, which had ties to the
18 community, and the greatest familiarity with local
19 conditions, and responding accordingly by
20 extending free time.

21 Individual claims of disability, on the
22 other hand, are always more challenging, and

1 evaluated under individual merits. The easy case
2 is if the cargo interests arise within free time,
3 but the operator or its operating system is unable
4 to produce the cargo, the MTO extends free time.

5 On the other hand, let us assume a cargo
6 interest claims that it's unable to get inside the
7 gate on the last day of 10 days of free time, a
8 day in which operations may have been slower than
9 normal due to a cause that the operator did not
10 have control over, while continuing to clear cargo
11 from its terminal. If the terminal operator had
12 no record of any effort to previously collect the
13 cargo during free time, it receives no proof of
14 any other disabling circumstances from the cargo
15 interest, additional free time is unlikely to be
16 granted.

17 This is fair and reasonable and
18 consistent with a negotiated agreement, and the
19 purpose of imposing demurrage charges providing an
20 incentive to pick up the cargo promptly. If the
21 cargo interests fail to pick up their cargo during
22 free time, and then later found it unable to do

1 due to an uncontrollable event during demurrage
2 time, the operator is unlikely to extend any free
3 time.

4 It is assumed the cargo interest had the
5 opportunity to pick up cargo during free time and
6 did not. Again, this can be a fair and
7 predictable result, it incentivizes the cargo
8 interest to manage the cargo outflow and pick up
9 within three times.

10 The petition's approach to relieve the
11 cargo interest for risk of delay whenever the
12 delay was beyond its control, but reframe the
13 initial negotiations and undermine the incentive
14 to pick up cargo. The cargo interest is
15 frequently the entity's best position to avoid
16 uncontrollable events by managing its cargo
17 effectively.

18 Petitioners would have the Commission
19 adopt the policy that applies uniformly across all
20 ports in all situations. Such a policy would
21 supersede the commercial negotiations that
22 currently set free time, related charges, and

1 would take away the ability of operators to
2 protect port efficiency by maintaining the
3 incentive to remove cargo from marine terminals.

4 Instead of allowing operators to provide
5 relief when warranted, the proposed policy would
6 shift all risks to the operators. The status quo
7 is operating well, and in those cases where cargo
8 interests disagree, they have the opportunity to
9 seek redress locally, and with the Commission
10 under current rules the petition should not be
11 granted.

12 Looking back at the hearing, there are
13 four matters that strike me, productivity,
14 compensatory infrastructure, and the Pillsbury
15 Doughboy. Productivity, in that, operators are a
16 volume business, optimizing millions of TEUs not
17 one; compensatory, in that cargo interests really
18 don't want to pay what it takes to compensate to
19 keep that box; infrastructure, in that the
20 mitigation efforts described for the winter events
21 only point out how effective the operators are
22 compared with the local infrastructure. We should

1 be having the discussion up the road.

2 And finally, the Pillsbury Doughboy, in
3 that pursuant to the discussion you've had with
4 John Butler on the last panel, you push in one
5 place, and you might be able to do it as hard as
6 it may be, and I agree with John on that, but
7 you're also going to anticipate pushing out in
8 another place. And a government regulation for
9 government interest, such as anti-trust
10 violations, there may be a risk, a valid risk; for
11 commercial reasons, you assume the commercial risk
12 as well. Thank you very much.

13 CHAIRMAN KHOURI: Thank you.

14 MR. ATKINS: Good afternoon, Chairman
15 Khouri, and Commissioners Dye and Maffei. I'm
16 President GCT USA, a subsidiary of GCT Global
17 Container Terminals Incorporated. GCT USA
18 operates two Green Marines, certified marine
19 terminals in the United States, both in the Port
20 of New York; one in Bayonne and one on Staten
21 Island.

22 I have 33 years experience in the marine

1 cargo handling industry working on both the
2 carrier and the MTO side. GCT Bayonne and GCT New
3 York are also members of the Port of New York &
4 New Jersey Sustainable Services Agreement, and
5 Port of New York & New Jersey, Port Authority
6 Marine Terminal Operators Agreement, which are FMC
7 filed discussion agreements that focus on matters
8 relating to promoting environmentally-sensitive,
9 efficient and secure marine terminal operations.
10 These agreements have submitted comments to the
11 docket on this issue, and I respectfully refer the
12 Commissioners to those documents.

13 I'm also Chairman of the Sustainable
14 Services Agreement and President and Chairman of
15 the Board of the Sustainable Terminal Services
16 Inc., known in the industry as STS. STS is a
17 non-profit corporation created by the six
18 Container Terminal Operator members of the
19 Sustainable Services Agreement for the purpose of
20 developing and implementing an RFID-based
21 technology platform to identify trucks entering
22 the terminals as a means of enhancing terminal

1 security and efficiency. You'll all hear more
2 about the work of STS and how GCT has leveraged
3 the technology platform to increase velocity.

4 In addition, as I also am Chair of the
5 Gate Operations Team of the Council for Port
6 Performance, or CPP as it's referred to: which is
7 formed by the port industry stakeholders in the
8 Port of New York & New Jersey to provide oversight
9 on the implementation of programs and initiatives
10 to improve efficiency and service reliability.

11 CPP was an outgrowth of the Port
12 Performance Task Force, or PPTF, which was created
13 in 2013 in response to a convergence of factors
14 that created obstacles to the smooth flow of cargo
15 in the Port of New York & New Jersey. Proud to
16 say that the PPTF was implemented and facilitated
17 under Sustainable Services Group.

18 At the risk of being accused of being a
19 suck up, I think it's important to thank the
20 Commissioners and the staff for the FMC, for the
21 work they do in fostering cooperative working
22 agreements among entities subject to the Shipping

1 Act.

2 As you will hear in the testimony, many
3 of operational efficiencies, our company has been
4 able to enjoy and present to the shipping
5 community, have had their genesis and FMC filed
6 agreements. While the Shipping Act creates
7 obligations it also has provided opportunities
8 that have spawned innovation that have obviated
9 the need for the draconian measures suggested by
10 the petition.

11 The purpose for my testimony today is to
12 voice opposition to the petition at issue that
13 seeks to shift to MTOs, the legal operational and
14 financial risks for delays caused by port
15 congestion, disruptions, government actions or
16 weather. The petition addresses commercial
17 matters that are best addressed through commercial
18 relationships and arrangements.

19 It proposes a one-size-fits-all, and a
20 flexible solution for a problem gleaned from
21 exaggerated port circumstances that have been
22 replicated recently -- have not been replicated

1 recently. The petition primarily focused on
2 events related to West Coast labor issues in 2014,
3 in extraordinary weather conditions on the East
4 Coast in 2014.

5 I will not address matters pertaining to
6 the West Coast. I can tell you that stakeholders
7 in the Port of New York & New Jersey have
8 collectively addressed the issue of potential
9 weather-related delays. Under the auspices of the
10 Port Authority port stakeholders including customs
11 and border protection, MTOs, the IEPs, railroads
12 and the motor carrier community, we participate in
13 planning conferences before and during
14 weather-related events.

15 During these conferences a unified plan
16 of action is discussed, taking each stakeholder's
17 view and circumstances into consideration, a
18 collaborative process. Notwithstanding issues
19 related to the deployment of snow removal, and
20 salting the roads, a mechanism has also been
21 created whereby the MTOs can individually assess
22 whether weather conditions warrant the extension

1 of free time for containers not already in
2 demurrage.

3 In addition, the Port Authority does an
4 excellent job in sending out blast emails to the
5 port community with periodic updates on port
6 conditions. This plan was just activated last
7 week. We do not believe the relief suggested by
8 the petitioner is necessary. In fact, we feel
9 that the proposed regulations will forestall or
10 reverse the significant process that has been made
11 in addressing port delays, offer disincentives for
12 retrieving containers in a timely manner, creating
13 terminal delays, and increased complaints and
14 disputes that will have to heard by the FMC.

15 We believe that current FMC procedures
16 provide appropriate recourse to the shipping
17 public and abuse of practices. This is all about
18 terminal velocity. In 2011, GCT Bayonne embarked
19 on an approximately \$350-million terminal
20 expansion project, building the most advanced
21 terminal on the East Coast. Among other things,
22 the project included the construction of a new

1 berth, a new gate complex, container yard
2 expansion, and an M&R facility.

3 Every dollar spent on this project was
4 spent with the goal of ensuring safe, reliable and
5 consistent cargo handling with decreased
6 processing time for over-the-road truckers. Our
7 goal was to ensure that cargo is never delayed,
8 that the harder the terminal is our semi-automated
9 rail mount -- mount to the entry yard, with was
10 designed to facilitate easy approaches and
11 departures for truckers.

12 In furtherance of increasing velocity,
13 and to ensure that truckers can get in and out of
14 Bayonne quickly, easily, and most of all, safely,
15 each gate is outfitted with optical character
16 recognition software, an RFID technology. This
17 has resulted in a more efficient process for
18 truckers in a safer work environment.

19 Because of its unique location in the
20 port that does not require Bayonne Bridge air
21 draft clearance, GCT was the only terminal in the
22 Port of New York & New Jersey to receive in

1 service a new class of large container ships. To
2 handle these vessels efficiently and as needed,
3 GCT Bayonne would open as a standing order on
4 Sundays without charge to the stakeholders,
5 utilizing the terminal on Sundays to create more
6 velocity.

7 In addition to the physical enhancement
8 of our facility, the terminal upgraded its system
9 technology, certain aspects of the technology in
10 Bayonne, is interrelated with the technology
11 platform created under the Sustainable Services
12 Group. Since its inception the members of this
13 discussion agreement, sanctioned by the FMC, have
14 addressed important matters concerning the
15 reduction of polluting air emissions from cargo
16 handling equipment, promoting the Port of New York
17 as an attractive destination for cargo interests,
18 enhancing marine terminal security, reducing
19 terminal congestion, and enhancing terminal
20 velocity through the Truck Reservation Program.

21 It is a port-wide cargo information
22 port-owned reservation system that I'll remark on

1 now. Not long after the Sustainable Group was
2 established, discussions about security ensued.
3 The members noted that there appeared to be a gap,
4 and a layered approach to facility security
5 envisioned by MTSA.

6 MTSA laid the foundation for what has
7 become the TWIC Program, which requires a positive
8 identification of individuals seeking unescorted
9 access to the terminals. It also requires cargo
10 security and access control procedures. What was
11 missing in this regimen was positive
12 identification of the over-the-road trucks seeking
13 access to terminals.

14 To fill this void the agreement created
15 STS to develop and implement an RFID tracking
16 system. It was anticipated that captured
17 information would be used for early warning of
18 suspicious activity, of forensic tool and criminal
19 investigation. The system was to have the
20 functionality to enable STS member companies, at
21 their own discretion, to restrict access to their
22 facilities.

1 The Port Authority also saw this RFID
2 system as a potential means of enforcing
3 compliance for its Clean Truck Program.
4 Environmental concerns are of great importance to
5 the company and the members of the agreement.
6 Thereafter, it's also further noted that the
7 system could be leveraged to create a web-based
8 terminal information portal that would provide
9 greater transparency, as we discussed today, to
10 cargo interests and the motor carrier community in
11 seeking information about the availability of
12 expected containers.

13 That portal, now known as TIPS, which
14 stands for Terminal Information Portal System, was
15 established in September of 2015. TIPS was the
16 first-of-its-kind information system designed to
17 enhance terminal efficiencies by reducing
18 uncertainty regarding container availability, an
19 unnecessary troubled ticket transactions. While
20 the petition is based on the faulty premise that
21 all matters are attended with port delays are
22 beyond the control of the shipper, receiver or

1 drayage provider.

2 In fact, shippers, receivers and drayage
3 providers exercise a great deal of control, and do
4 not necessarily utilize tools provided by MTOs to
5 hasten terminal transactions. Often drayage
6 providers dispatch trucks to marine terminals
7 before containers are available for pick up, or
8 without ensuring that outstanding charges have
9 been paid, and necessary releases issued. The
10 Port Authority has reported that seven of the top
11 ten causes of trouble tickets in the Port of New
12 York & New Jersey can be avoided by checking the
13 TIPS System in advance.

14 In addition to general information
15 regarding port- wide matters and specific
16 announcements, TIPS provides information about
17 container availability, location, regulatory
18 holds, any charges or demurrage as well as the
19 status or free time.

20 The United States Department of Commerce
21 has singled out TIPS as one of its best practices
22 for improving the nation's competitiveness. TIPS

1 is noteworthy because it was implemented by MTOs,
2 not as a product to government regulation, but as
3 a commercial solution created with input provided
4 by cargo interests and the port drayage community.

5 TIPS provides cargo interest in the
6 motor carry community, a one-stop online tool to
7 assist them in managing their business in the
8 port. TIPS which has been made available to the
9 shipping public at no cost has been well-
10 received. It's prompted the STS to work with its
11 system developers to enhance its information
12 capabilities.

13 Projects like TIPS are consistent with
14 the mission of the FMC, in effort to the
15 Commissioners and encouraging commercial solutions
16 to supply chain challenges. TIPS, which is now
17 being followed by other regional information
18 portals, is consistent with the notion of a
19 nationwide information portal, considered by
20 Supply Chain Innovations Teams Project, authorized
21 by the Commission, and spearheaded by Commissioner
22 Dye.

1 In addition to its involvement with
2 implementing TIPS in the furtherance of supply
3 chain information transparency, GCT Bayonne is
4 currently in preliminary discussions with GE
5 concerning its Optimizer Project, as they
6 anticipated to providing increased visibility
7 through a shipment transportation life cycle.

8 But building on the TIPS platform, in
9 January of 2017, our facility implemented a truck
10 reservation system. In the first few weeks of
11 operations appointment were limited, 6:00 a.m. to
12 8:00 a.m. Appointments span a two-hour window.
13 Shortly after implementation the demand for
14 appointments increased dramatically and
15 periodically throughout the past year. The window
16 for appointments has grown.

17 Currently, access to GCT Bayonne is only
18 available by appointment from 6:00 a.m. to 1:00
19 p.m., after 1:00 p.m. Trucks without appointments
20 are welcome at the terminal. While the system has
21 been in effect for a short period of time,
22 dramatic performance enhancements have been

1 realized even during non-appointment hours.

2 Cargo interests and draymen that may
3 have in the past been reluctant to embrace
4 reservations, have articulated a positive response
5 to this new protocol for terminal access. GCT
6 understands that change in behaviors is not
7 something that can be achieved overnight, and it
8 proceeded carefully in implementing the system.

9 While GCT does not assert that a truck
10 reservation system is right for all terminals, it
11 has worked at our facility. We are proud that
12 trucker utilization has dictated the extension of
13 appointment time slots. The company credits much
14 of the success of the implementation of the
15 reservation system on its early outreach to the
16 motor-carrier community, and bringing them into
17 the system design-phase brainstorming sessions.

18 One factor that has helped improve the
19 program is a reduction in appointments that are
20 booked but not used. We urge truckers that are
21 unable to use an appointment to notify us in
22 advance so the appointment can be offered to

1 others. The effort has helped reduce the no-show
2 rate from 15 percent early on in the program to
3 less 5 percent now.

4 Speaking of no-shows, we do not impose
5 fees for missed appointments or for making initial
6 appointments. On the rare occasions that
7 deterrents are necessary for repeat offenders, we
8 suspend them from making reservations during the
9 peak 6:00 to 8:00 a.m. time slot for a period of
10 time. What we have seen thereafter, are these
11 former offenders becoming diligent in keeping
12 appointments to ensure they are restored the full
13 privileges. Moreover, GCT incentivizes highly
14 compliant drayage operators by giving them access
15 to additional appointment blocks when needed.

16 CHAIRMAN KHOURI: Can we come to the --

17 MR. ATKINS: Yes. I'm up to my
18 conclusion, trust me. I hope. Several years ago
19 our parent, GCT, embarked on a proactive effort to
20 enhance velocity at all of its facilities. The
21 measures implemented were unique to the
22 circumstances of each particular terminal.

1 It has been said that when you have seen
2 one terminal, you have seen one terminal. For
3 Bayonne, the answer is semi-automation, RFID-based
4 software systems and the truck reservation system.
5 For its sister terminal in Staten Island, the
6 answer has been enhanced cargo information,
7 efficient on- dock rail operations, and an on-dock
8 container examination station.

9 In my experience, it s clear that the
10 biggest impediments of terminal velocity are
11 containers stored on the facility for long periods
12 of time, having to position and reposition idle
13 containers over and over again, in stacks, slows
14 down the delivery of containers to truckers
15 waiting for them.

16 Marine terminals cannot be treated as
17 storage facilities. Marine terminal space is
18 limited, as we've heard throughout the last two
19 days. Extended free time is a detriment to
20 terminal velocity, there must be an incentive for
21 cargo interests to retrieve containers in a timely
22 manner.

1 My company and MTOs throughout the
2 country have collectively invested billions of
3 dollars in enhancements to their facilities in
4 order to efficiently service the larger container
5 ships, and to improve landside service. These
6 terminals are fixed in their locations and cannot
7 move. In order to realize a return on their
8 investments, these terminals must provide the
9 level of service that satisfies the needs of their
10 customers.

11 Because customers can exercise choice if
12 a terminal service is not sufficient. MTOs are
13 highly motivated to the service port draymen in a
14 time-effective manner, and to clear their
15 terminals of congesting-causing containers.

16 For the reasons cited herein, the
17 Commission should deny the petition and continue
18 its efforts in addressing port congestion and
19 delays, by fostering commercial solutions similar
20 to the ones I've described today. Thank you for
21 your time.

22 CHAIRMAN KHOURI: Thank you.

1 Commissioner Dye, had a request I think. Please
2 proceed.

3 COMMISSIONER DYE: Yes. Thank you. Mr.
4 DeNike, would you take up where you left off, when
5 you were explaining to us the differences among
6 demurrage, and what you believe is really a
7 detention and per diem challenge?

8 MR. DeNIKE: Yes. You know, quite
9 frankly, we have -- I'm surprised that there's a
10 problem with port demurrage, at least at this
11 magnitude. Demurrage, port demurrage is when the
12 containers or cargo are on the dock, again, let me
13 explain. We operate by port tariff, the port
14 tells us, all terminals, how many free time -- how
15 many days in free time that we should allow.

16 When the container is delivered out,
17 then there is a period of time that the steamship
18 companies allow that container, chassis, or
19 reefer, or whatever to stay out. That's detention
20 and per diem. And that is, from what we see, most
21 of the problem. We very seldom, we handle a lot
22 of containers, and almost every steamship line on

1 the West Coast, and we don't get problems with
2 demurrage on our behalf.

3 You know, this is -- the only problems
4 we've had. I've been here 50-something years, so
5 I've been here a long time on this waterfront, and
6 we've been collecting demurrage when I was 19
7 years old, and never had problems like this until
8 containers came in, and then there was per diem
9 and detention. It added to cargo demurrage.

10 So, what we are concerned about, and
11 it's pretty clear and concise and, again, as I
12 said, 95 percent of this is import demurrage, not
13 export demurrage. The container comes off the
14 dock, it stays on the dock too long. It's not
15 when it comes into the dock for export, it's when
16 it comes into the dock for import. And that's
17 clear, you have X-amount of days, you pick it up,
18 if you don't pick it up, you pay demurrage.

19 On the West Coast, we don't have
20 hurricanes, we don't have snow, we don't have very
21 many excuses for an importer not to pick up their
22 container. But if there is a reason, believe me,

1 we waiver it very easily, but very seldom is there
2 a reason.

3 Now, you know, if you want to get into
4 facts, what happens is, you know, I'll just say it
5 the way it is; truckers, well, oversell
6 themselves, and you'd have big truckers on the
7 West Coast that handle a lot of containers. They
8 may tell five customers they are going to pick up
9 their container today, but they couldn't pick them
10 up because they didn't have the trucks, or there
11 was some reason for it, and they are going to
12 blame the terminal operator.

13 And then when I hear that people can't
14 call the terminal, I don't understand that either.
15 Our people, and I think most people, are very
16 accessible. Being called, we don't even -- they
17 can call right directly to the phone numbers, they
18 don't even go through an operator. Everyone has
19 our numbers.

20 We have terminals where our
21 superintendents are out in the yard, our truckers
22 and BCOs have their cell numbers, they call them

1 on the cell, where is my trucker. The trucker
2 will -- the superintendent will look for his
3 trucker, and sometimes they can if they are not
4 there.

5 So, that's bothersome when you are here
6 trying to make up fair rules, you know, that
7 govern everybody because it's going to be very
8 difficult if not impossible, at least on the
9 terminal side. You know, there may be able to be
10 some rules on the steamship line with respect to
11 detention and per diem. I don't know, I'll want
12 to talk to them; but on the terminal side, no.

13 And when I'm listening to these issues,
14 at least this morning, and from what I heard
15 yesterday, I think people are confusing demurrage,
16 detention and per diem. And I don't want to be,
17 as a terminal operator who -- again, I'm here
18 because I don't -- I don't care if we didn't bill
19 one dime of demurrage. You know, demurrage is
20 nothing to us.

21 We want those containers off the dock,
22 and I don't want any reason for anybody to say

1 that they, you know, that they can keep those
2 containers on the dock for any longer than what
3 the port tariff says that you should take them.
4 And I'm not sure is that explaining the question?

5 COMMISSIONER DYE: Yes. It helps. I
6 just wanted to make sure that you completed your
7 thought there. Could you explain now, and I've
8 heard other terminal officials discuss the
9 difference between the terminal demurrage and the
10 carrier demurrage. Could you talk a little bit
11 about that too?

12 MR. DeNIKE: You know, terminal
13 demurrage is basically the cargo.

14 COMMISSIONER DYE: Right.

15 MR. DeNIKE: The cargo. We have nothing
16 to do with the container, whether it's a reef or a
17 dry -- that's not our -- you know, again, before
18 containerization demurrage was billed for just
19 cargo. It's still like it was 50 years ago, for
20 the terminal operator. It's only the cargo. The
21 demurrage, before the container is picked up, it's
22 the demurrage that we bill for the steamship line

1 as part of our demurrage.

2 For example, if we bill \$200 a day, \$180
3 approximately is a steamship company demurrage for
4 their equipment. Ours is at, you know, 10 percent
5 or less. But then the BCO or trucker gets upset
6 at us because we are billing X-amount of days,
7 thinking that it's all going to the terminal
8 operator. It's not going to the terminal
9 operator. And like I say, we have the ability to
10 waiver our part, but we don't the ability to
11 waiver their part.

12 And in some cases, there's a reason why
13 the carrier does not want to waiver their part,
14 and I'm not trying to, you know, throw anyone
15 under the bus, but this is the way the terminals
16 operate, and you guys have to understand that.
17 You know, and the BCOs have to understand that,
18 and the truckers need to understand it. I don't
19 think anybody really realizes who is -- you know,
20 how this demurrage process works. Then when it
21 leaves, that goes on per diem, and so much a day
22 for the container, and it goes on per diem for the

1 chassis too.

2 We don't bill any of that. That has
3 nothing to do with us, the steamship company bills
4 that, and the chassis owner bills that. So the
5 only thing we bill is that demurrage before the
6 container leaves the terminal.

7 COMMISSIONER DYE: Thank you. Mr.
8 Atkins, do you have any ting to add on that?

9 MR. ATKINS: Other than confirm it is a
10 very common practice under terminal service
11 agreements that the MTO, on behalf of the carrier,
12 will collect the demurrage for them, upfront, so
13 it does come through on one bill, and then, you
14 know, there's the settling up at the end of the
15 month, so it's, again, it's a very common
16 practice.

17 COMMISSIONER DYE: Right. Thank you.
18 Thank you, thank you very much.

19 CHAIRMAN KHOURI: Do you want to
20 continue with the questions?

21 COMMISSIONER DYE: No.

22 CHAIRMAN KHOURI: Mr. DeNike, we've had

1 previous testimony from some witnesses that the
2 shippers consignee beneficial cargo interests
3 while they have a choice with the vessel operator,
4 they don't really have a choice as to the terminal
5 we'll use. And I think an example decided with --
6 now with alliances that they don't even really
7 know, per se, they know they are going to the port
8 of wherever, Seattle, Tacoma, but they don't know
9 exactly which terminal that ship may go to.

10 And as I understand it, you have said
11 that shippers do have a choice, they select the
12 port, the carrier, and the license to motor
13 carrier. Is there an inconsistency in that or is
14 there -- help reconcile it for me so I understand.

15 MR. DeNIKE: Well, I don't know. Maybe
16 I wasn't clear. Normally when there are
17 alliances, certain services go with certain
18 terminals, even though they may have four or five
19 services within the alliance, services normally go
20 with a certain terminal. So, the exporter or the
21 BCO should know what terminal those ships are
22 going to. And I think the carriers are pretty

1 clear in notifying the BCOs and truckers which
2 terminal those ships are going to.

3 Now, if you are asking me, do they have
4 a choice of what ships that they are going to?
5 No, they don't have a choice. The BCO does not
6 have a choice. On the other hand, you have more
7 terminal operators now that are trying to convince
8 the carriers to use their terminals, so terminals
9 like us are actually trying to do a better job for
10 the carrier, so that the carriers will want to use
11 us.

12 And we now have created relationships
13 with the BCOs that we never had before. I heard
14 earlier that BCOs don't have relation with
15 terminal operators. Well, we have very good
16 relations with many BCOs. BCOs will let -- this
17 peel off program that I talked about, is all
18 between us directly with BCOs, not through the
19 carrier.

20 And as I said, the carrier -- the BCOs
21 or truckers talk to us all the time so, you know,
22 do they have a legal contract with us? No,

1 because our contract is with the carrier not with
2 the trucker or the BCO. So, again, they don't
3 have a choice where that ship goes to, but
4 normally, you know, they should know where that
5 ship is going to, because the carriers are very
6 careful to try to not confuse the community as to
7 what ships are going where under these alliance
8 programs.

9 CHAIRMAN KHOURI: Thank you. That does
10 help clarify. Mr. Crowley?

11 MR. CROWLEY: Mr. Chairman, I might only
12 observed that, that certainly at the time the
13 alliances were formed, there might have been an
14 instantaneous shifting of berths. And that might
15 have caused confusion amongst a lot of people, but
16 that's not a routine event, and certainly out of
17 those that I've heard from, the report that even
18 cargo interests, you know, visit terminal
19 operations to witness and to evaluate them prior
20 to their carrier negotiations.

21 So, implicitly, I've got to believe that
22 there's, say, feedback loop, and whether they can

1 contract for one another is maybe a fine point,
2 but they have an influence I would submit.

3 CHAIRMAN KHOURI: Yes. I think everyone
4 remembers the history of these alliances, well,
5 what are we at now, 4.0, whatever it may be, that
6 there was some sorting out between alliance
7 members, each alliance member and which individual
8 MTOs would be served, and that has stabilized
9 itself out. Serendipity, if I can, if you have
10 any other comments on that question, or then we
11 just move on.

12 A Journal of Commerce Article here, last
13 week I guess it was, two more New York, New Jersey
14 terminals prep for truck appointment systems, and
15 Mr. Atkins, they mentioned your terminal. Are you
16 familiar with this article?

17 MR. ATKINS: Yes. I did not write it,
18 but I'm familiar with it.

19 CHAIRMAN KHOURI: No, but I thought one
20 of thought one of the things that was interesting
21 is as the group worked through and found operating
22 differences inside of the same port with two

1 different terminals, and how you had to -- felt it
2 best to adjust the appointment systems from one to
3 the other. If you could, comment on that for the
4 record?

5 MR. ATKINS: Sure. We have the, I would
6 say, fortunate, not unenviable position of having
7 all the pieces of the puzzle to start an
8 appointment system in, first at Bayonne. So, we
9 went ahead while working with the other terminal
10 operators and the STS group, to work to the basic
11 platform with the software company. And it
12 enabled the overall appointment system to still be
13 able to go through one single source, one portal.

14 However, each terminal will maintain its
15 own individuality, and its business rules and, you
16 know, what it will and will not allow, with the
17 appointment system, and the reason that we -- when
18 we kicked it off, and we started it from only 6:00
19 a.m. to 8:00 a.m., is we brought the drayage
20 community in earlier on in the process, and they
21 were the ones who woke us up, when they said,
22 well, you can't put an appointment system in all

1 day, because if you're going to be the only one,
2 what if we are at other facilities, you know, and
3 we get held up. You know, if everybody is on an
4 appointment system, that's a different way.

5 So, you know, the light bulb went off
6 and we said, okay, how about if we start the first
7 few hours of the day, so at least you could start
8 your day there. It is each, we knew that we could
9 fill the next hour with appointments based on
10 demand, we added an hour, and that's why we are up
11 to 1:00 o'clock now in the afternoon.

12 And, you know, in a low of ways it works
13 very well. I mean we are pushing 73 percent on
14 average of our overall gate transactions through
15 that window from 6:00 a.m. to 1:00 p.m., and then
16 from 1:00 to 5:00, or 1:00 to 6:00 we do the
17 remaining 27 percent. So, people who want to make
18 the appointments can still get the consistency and
19 level of service they come to expect from 6:00 to
20 1:00.

21 And people that maybe don't have the
22 flexibility, or for whatever reason didn't want to

1 partake, so have the afternoon hours to come in
2 and pick up containers afterwards. So, we thought
3 it was a good way to get it implemented and get it
4 started in New York.

5 CHAIRMAN KHOURI: Thank you. And I
6 mean, it struck me as another very current day
7 example of how, you know, good collaboration, and
8 work with all the various stakeholders that
9 competition work can come up with superior
10 results.

11 MR. ATKINS: Yes.

12 CHAIRMAN KHOURI: In terms of
13 efficiency.

14 MR. ATKINS: Yes, sir.

15 CHAIRMAN KHOURI: Let me yield and turn
16 to my colleague, Commissioner Maffei?

17 COMMISSIONER MAFFEI: Thank you, Mr.
18 Chairman. I, too, was excited to see you try out
19 an appointment system, and I don't know if -- we
20 passed judgment on it but, you know, there were
21 resistance, and on a number of different sides,
22 but I still think it's important to try. It

1 sounds like you've had some success, and hopefully
2 some of those people are coming around.

3 But I want to turn back to this
4 Commission, and that means this petitions, and I
5 am a little confused here, because there seems to
6 be some rather significant discrepancies between
7 what the three of you are saying, and what the
8 last panel said, and both the MTOs and the
9 carriers oppose the petition, nothing to see here,
10 there may be individual problems, but we are
11 working it out, and we have this -- you know, the
12 L.A. Long Beach slow down, and stuff like that,
13 but we've worked a lot of that out.

14 And yet, I am extraordinarily confused
15 about exactly how this works now, because the
16 carriers seem to imply that they do a lot of
17 collecting and passing on demurrage charges, and
18 sometimes they can waive the charges, and
19 everybody does, and that's fine, but sometimes the
20 MTO still charge, and their carriers say, well,
21 we'll take the loss, and there was at least one
22 carrier representative that testified that they

1 may lose money on the whole deal.

2 And then you are, I think, saying, no,
3 no, no, it's the carriers that really are imposing
4 most of this. And I know, Mr. DeNike, you
5 mentioned that 90 -- you know, 10 percent of the
6 demurrage is MTO, and the other 90 percent is
7 actually carrier demurrage. Can any of you help
8 me out to try to figure out how to reconcile these
9 two approaches to the testimony?

10 MR. CROWLEY: If I can start out,
11 Commissioner. By virtue of having spoken to 11
12 different operators in 14 different locations, my
13 lesson was that everybody is right, that because
14 of operational circumstances, because of the power
15 of bargaining, and the market factors that exist,
16 here are different answers that come out. I would
17 say that they are both carrier and terminal
18 operators, you had three carriers in today, there
19 are others that you didn't have in, and you would
20 likely get some different responses.

21 I think the common answer though, is
22 that all of those that I've spoke to, and I'll

1 defer to my colleagues here, to answer from their
2 perspective, that the commercial transaction, and
3 the negotiations that are occurring, deliver a
4 result that is predictable to the parties that
5 have financial interests at stake.

6 And that in each of the locations, and
7 it's a different calculus in each location, New
8 York & New Jersey, L.A. Long Beach, two
9 high-profile markets, but they are different. And
10 then you get to smaller markets down the
11 Southeast, and the Gulf, and you're going to find
12 greater differences.

13 And the lines and the terminal
14 operators, even if they are the same company, will
15 react differently to a different piece of property
16 located in different geography. Different
17 constraints operationally, in terms of how much,
18 you know, grounded area there is, if you have
19 reefers out, or some other factor.

20 So, there's a lot of reasons, but let's
21 come back to, we've both oppose the petition, for
22 reasons that I think we rely on the negotiations,

1 and these guys don't even participate in the
2 commercial negotiation between the cargo interests
3 and the carrier, and they still want to rely on
4 that to be functional. And not to have that
5 somehow brokered from afar, in terms of how they
6 make decisions, and take away their flexibility
7 later when things go broke in the local arena.
8 And again rely, instead, on the local factors and
9 those that know them to best deal with them when
10 they occur.

11 MR. DeNIKE: Yes. Let me chime in on
12 here. The terminal operator normally, like us,
13 all of our terminals, we bill our demurrage. Now,
14 there will -- no steamship company bills our
15 demurrage, unless they tell us that they will
16 absorb the demurrage for a particular account that
17 they have, they'll say, this account, A, B, C, you
18 know, because of their competition with the other
19 carrier, they'll decide they'll pay the demurrage.

20 We'll bill the steamship company
21 demurrage, instead of the trucker or the BCO,
22 because that's what they're saying, but we are

1 billing it. They then, and I believe, most of the
2 time, absorb that demurrage, but they may bill
3 that demurrage also. I don't know. The other
4 thing is on export demurrage -- because normally
5 terminal operators do not receive export
6 containers, if the ship is late and there is
7 demurrage to be billed then that demurrage is
8 billed to the carrier, not to anybody else. And
9 that carrier then may decide to bill the demurrage
10 but it's also my understanding that most of the
11 time they absorb it. So when they're saying
12 they're billing demurrage, at least, you know, for
13 us and I think most terminal operators, you know,
14 it's because they have agreed to absorb the
15 demurrage that the terminal operator, their
16 portion of the terminal.

17 COMMISSIONER MAFFEI: And, Mr. DeNike,
18 do you stand by this 90 percent is the carrier and
19 10 percent is the MTO and assuming you do, is that
20 generalizable or is that really just, that's just
21 you folks? And --

22 MR. DeNIKE: No, no, I think its -- let

1 me say this. The rates for the terminal operator
2 is consistent. They are there and they are based
3 upon port tariffs. These, the carrier rates are
4 different because they are negotiable. So we may
5 have -- but our rates are there. Everyone can see
6 if they want through the port tariff what we are
7 getting because it's out there. But when it comes
8 to the carrier, the carriers make their own deals
9 with their own -- with their customers depending
10 on what, on, you know, competitive reasons as to
11 what they want to do and how much they want to
12 charge, how much free time they want to give and
13 that kind of thing.

14 But with us we don't, the terminal
15 operators can't do that. We have a tariff that we
16 have to follow. Each port governs that tariff and
17 that's it. But when you look at what we bill when
18 we do bill it, the portion that goes to the
19 terminal operator is minute compared to the
20 portion that goes to the carrier. But the person
21 paying that might not understand that. And again
22 I'm not, I'm just saying facts and I just want

1 everyone to understand what, you know, clearly,
2 you know, how this works.

3 Again as I initially said we are
4 concerned that you're -- that this is so complex
5 on the carrier side that you're going to have to
6 feel that you have to do something but it's not
7 that complex on the terminal operator side. It's
8 controlled by port tariffs and we don't want that
9 changed. I don't want some rule that says now
10 they can because they have got a flat tire on the
11 freeway they can keep their container at the
12 terminal for three more days. You know, we just
13 -- that's the concern that we have.

14 COMMISSIONER MAFFEI: Just one other
15 question for this round but I asked this at the
16 last panel. And so yesterday it was claimed that
17 a good portion of the time or at least a good
18 portion of the time when there is an issue the
19 full demurrage charge is assessed or has to be
20 collected before a container will be released even
21 if there is a dispute. Is that true one, and two,
22 is that the sort of thing that sounds reasonable?

1 I mean, would -- if your goal is really to keep
2 the containers moving and you're collecting it why
3 not, you know, collect half or a portion of it?

4 MR. DeNIKE: If we look at -- every
5 truck knows what it, every trucker should know
6 what the demurrage is going to be before they
7 arrive. They can -- we have it going along the
8 West Coast, we can look on the internet.
9 Everything is right there. If I'm a trucker I'm
10 going to look at that container number, I know
11 what the demurrage is before I even come. If I
12 have a problem with that I'm going to call the
13 terminal operator and I will argue that ahead of
14 time. Not before the trucker, very seldom is
15 there a necessity for a trucker to argue once he
16 is there unless they haven't done their job by
17 looking ahead to see what that demurrage is going
18 to be. They have the opportunity and they all
19 know that they can see what it is.

20 A lot of times it's billed because if we
21 know the trucker or we know the BCO and we know
22 that we can trust them to pay we will bill it.

1 They don't have to pay it. But if -- there are a
2 lot of fly by night companies we are not going to
3 bill and they are going to have to pay us before
4 they pick it up. But if they have a problem with
5 that demurrage amount they call and they talk and
6 they and sometimes they do do that and we will
7 explain it and again if we feel that they have a
8 legitimate reason we will waive it. Because I
9 don't want one of my -- our steamship company
10 customers going to the steamship company and
11 complaining about us. I don't want that. It's
12 not worth it to us. If a guy, if somebody has a
13 legitimate reason, they didn't pick up the
14 container, our managers know waive that demurrage
15 because I don't want some steamship company
16 calling me telling me that their customer is
17 complaining because they had to pay demurrage when
18 they couldn't. And I will tell you we do not get
19 -- there isn't a conflict here.

20 COMMISSIONER MAFFEI: Just to clarify
21 your manager, so your managers have the authority
22 to waive the demurrage but is, is that just as you

1 pointed out that's just the MTO demurrage. Do
2 they still have to collect for the carriers?

3 MR. DeNIKE: In some cases that's a
4 problem and I'm, you know, to be honest, we again
5 because we don't want a carrier customer
6 complaining about us we are, we bend over pretty
7 well and I think most terminal operators do. But
8 there are times when a carrier doesn't feel that
9 it's warranted to and then we will have to say we
10 will waiver our demurrage but we can't waiver
11 their demurrage. And that's what we do.

12 COMMISSIONER MAFFEI: But in either case
13 you collect the carrier demurrage --

14 MR. DeNIKE: Yes.

15 COMMISSIONER MAFFEI: -- beforehand?
16 Okay. At the same --

17 MR. DeNIKE: But again they know what
18 that demurrage, the carrier demurrage is before
19 they come into that terminal. And all that can be
20 done ahead of time.

21 COMMISSIONER MAFFEI: You made that
22 point, okay. Yes.

1 MR. DeNIKE: It's not while the truck is
2 sitting at the terminal.

3 MR. ATKINS: And I think Mr. DeNike
4 brings up a valid point when we talk about
5 terminal efficiency, velocity, port congestion. I
6 mean, prior to our appointment system 24 percent
7 of all our gate transactions were going to the
8 trouble window which means those drivers came
9 down, the container wasn't ready to go for
10 whatever reason, you know, some may be ours but a
11 lot of the cargo interests and then they have to
12 go to the trouble window and work through that.
13 But if they -- once we put the appointment system
14 in place we are now down to the single digits
15 because everything needs to be cleared and done
16 before it gets there so now a driver gets in,
17 driver gets out.

18 So to End's point, if its looked at
19 ahead of time and there's, you know, an issue or
20 question on demurrage that may be an exorbitant
21 charge, I don't know if there's an MTO out there
22 that's not going to say okay, if we -- let's

1 research it. If we find out there's a problem we
2 are going to issue a credit, you know, and then
3 they will deal with the carrier on it. But the,
4 you know, just to clarify a little bit because, I
5 mean, now we are starting to get into terminal
6 service agreements and, you know, I don't think we
7 want to get down there but we collect, you know,
8 its general practice in New York to collect
9 terminals demurrage after the free days. So if a
10 driver comes in to pick up a load of anchovies,
11 there's your third element for your pizza,
12 Commissioner Maffei, so and its three days in
13 demurrage, he pays the three day demurrage for the
14 terminal and the three day demurrage for the
15 carrier. We collect it all and then at the end of
16 the month we give the carrier their piece back.
17 Unless there is a difference in New York to some
18 degree, I don't want to speak for all terminals
19 but there are service contracts and, you know,
20 there is a certain percentage of cargo that moves
21 through in service contracts that we don't collect
22 the terminal demurrage either and that, and those

1 containers set. And again that's against -- works
2 against velocity on the marine terminal but we
3 realize that's a commercial consideration and we
4 do it for our customers.

5 COMMISSIONER MAFFEI: Those answers are
6 helpful, thank you. That's all my time for this
7 round.

8 CHAIRMAN KHOURI: Using big thumbs, what
9 percent of these charges are billed on a normal
10 business credit relationship and what percent
11 would you hold a container before it's released?

12 MR. DeNIKE: Of course I can't give you
13 -- I'm sorry. I can't -- I would have to tell you
14 with our -- what I would -- if I had to guess the
15 majority is billed. It's not -- we don't want
16 people bringing checks to the terminal. So if we
17 can bill it or let it sometimes it's on a credit
18 card we will, that's the way we go. We do not
19 want truckers bringing checks or money to the
20 terminal if at all possible. So I would say most
21 of it is billed either on a billing or through a
22 credit card type of thing.

1 CHAIRMAN KHOURI: A normal business
2 ratio that we look at is bad debt uncollectable
3 accounts. Is this a problem issue or is this in
4 --

5 MR. ATKINS: We have accounts set up
6 with most of the big brokers in the industry so we
7 send credit to brokers and then bill them after
8 the fact. We do have a handful of truckers and
9 even a handful of shippers but I would say
10 probably 60 percent is billed and collected, you
11 know, prior to the container either somebody
12 coming down or leaving the facility. We offer a
13 couple electronic ways of paying to make it
14 easier. But if, I'm glad you brought that point
15 up about receivables.

16 If you look at our receivables statement
17 average say it goes 30, 60, 90, 120. If you look
18 at 180 where ours stops and above there is no
19 money on the steamship side of that balance sheet.
20 It's all accounts where we have been granted credit
21 and they shut down as trucker ABC and opened up as
22 DEF or whatever it is. So that's why you see less

1 and less and now with today's technology when you
2 can pay online and PayPal or whatever it's just a
3 heck of a lot easier. So but again I think the
4 common theme that you've heard throughout the last
5 two days is somebody comes back after the fact we
6 have commercial relationships with not just the
7 carriers but we probably have more cargo interests
8 that come down into our facility than we do ocean
9 carriers and truckers.

10 We get more calls for truckers saying
11 hey, you know, I may have screwed up yesterday or
12 this happened yesterday and can you give me
13 another day on these two boxes or what can you do
14 for me? So, I mean, we are in business to move
15 volume. We are not here to shut everybody out.
16 So I think you will see most marine terminal
17 operators are going to work with people on that
18 but you can't extend credit and then, you know, we
19 all have shareholders and owners, you know, when
20 they look at their receivables 180 days out and
21 money you're never going to collect it doesn't
22 work.

1 MR. DeNIKE: Yes, we collect I would say
2 95 percent of it. There are companies small, fly
3 by night companies who go out of business. And we
4 don't collect from them. If we are not paid we
5 don't service them in the future so that's
6 basically it. So we really have no problem
7 collecting what's billed for the most part.

8 CHAIRMAN KHOURI: One last thing to
9 John, did you want to add to that?

10 MR. CROWLEY: Yes. In terms of what the
11 problem set is, it's not in the majority of the
12 activities, you know, when you look at the
13 statements and all. What I hear is the majority
14 of the problem are those exceptions and the
15 exceptions and I don't want to point fingers in
16 one category to the other but might be that that
17 trucker that has told the cargo interest you're
18 good to pick up within your demurrage period and
19 so they're all paid up and they come in and they
20 have got to deliver the delta because it wasn't
21 picked up and it was on their ticket. And now you
22 have got, you know, a third party that neither one

1 has got a financial relationship with and this
2 causes then potentially a problem that the
3 shipping interest doesn't even know about because
4 who wants to tell them? You know, who is going to
5 explain that and so they've got a, the shipping
6 interests feel they have a viable complaint here
7 and yet there was this other little piece out
8 there that never got explained.

9 And that's the utility of the remedy
10 system that exists today that doesn't, when not
11 carried through to the logical conclusion those
12 kind of facts get lost in the noise level. And I
13 just would urge that whatever we do we encourage
14 that the system that's in place today gets used so
15 that we can truly parse some of those facts in a
16 better and more helpful way for all concerned.

17 CHAIRMAN KHOURI: Yes and I appreciate
18 some of the questions for me and all of our, my
19 colleagues is to make sure that the record is as
20 full and complete as possible. One last question
21 and I will turn it over to Commissioner Dye.
22 Earlier an excellent witness talking about and

1 again his situation and his reality but that a
2 terminal had said that this is what we have to
3 charge because it's part of the tariff and that
4 under the file rate doctrine they can't negotiate
5 it. I don't know how often that particular, you
6 know, we have moved past file rate doctrine on the
7 freight side of things between the vessel
8 operators and the BCO's. To what extent is file
9 rate doctrine still a part of the practice in
10 lexicon on the terminal side?

11 MR. CROWLEY: I think that the informal
12 practice of if you have a port wide tariff, its
13 utility is to set out very clear guidance. Its
14 utility as in all rules cite for if you form a
15 policy guidance in the future. Their utility is
16 if people follow it. And so there is a tendency,
17 a greater tendency to follow uniformly and
18 strictly a port wide tariff that there is if you
19 operate under a service agreement where the
20 totality of the agreement is different. You know,
21 I don't want to speak to people's knowledge and
22 intent necessarily with respect to the doctrine

1 but I did hear and I can speak to the informal
2 practice, the more certain the tariff is the more
3 likely it is to be strictly followed.

4 MR. DeNIKE: Yes. Understand that we
5 have a tariff to follow with respect to free time
6 and when demurrage starts. With that revenue is
7 terminal revenue, it's not port revenue. So we
8 have the, you know, freedom if we want to waiver
9 demurrage. It's our money, it's not anyone else's
10 money. So for that I'm not sure what happened
11 with that instance. Maybe again it may have been
12 per diem, it may have been detention, it might
13 have been, you know, something other than port
14 tariff demurrage.

15 So, you know, years ago that money went
16 to the port. When you leased a terminal I'm
17 talking about 30, 35 years ago you followed on the
18 West Coast anyway, I'm not sure here in the East
19 Coast. You followed and you didn't, the terminal
20 operator didn't have that right to waiver. But
21 over the years we've negotiated the demurrage
22 revenue to be terminal revenue based upon the

1 enormous amount of money we are paying for rent.
2 So again what he says, what this gentleman said
3 may have happened years ago. I can't see that
4 happening now. So with all of these cases, you
5 know, and we talked about this earlier. You know,
6 when people talk that way they need, and we need
7 to know the exact facts of what happened in that
8 case to understand what, why he paid what he did.
9 It can't, and we can't talk in generalities. So
10 --

11 CHAIRMAN KHOURI: I appreciate it.
12 Thank you. Commissioner Dye.

13 COMMISSIONER DYE: Well, in
14 generalities, do you -- what is the biggest reason
15 that demurrage accrues in your experience?

16 MR. DeNIKE: For cargo demurrage?

17 COMMISSIONER DYE: Um-hum.

18 MR. DeNIKE: It's a couple of things and
19 again people aren't going to like what I'm hearing
20 it's because the importer doesn't have space to
21 pick up the cargo, doesn't have anywhere to put it
22 or because the trucker --

1 COMMISSIONER DYE: Warehouse space for
2 example?

3 MR. DeNIKE: Yes. In other words he
4 only has space for 10 containers and he has got 25
5 containers on the dock. Or a trucker has oversold
6 himself. As far as I'm concerned very little of
7 it is because of a terminal operator
8 responsibility and, you know, and that's the
9 honest truth.

10 COMMISSIONER DYE: Okay. Okay, Mr.
11 Atkins, what's your experience?

12 MR. ATKINS: Two reasons. The service
13 contracts that we see with large shippers or large
14 numbers of containers is just utilizing free space
15 with our experience.

16 COMMISSIONER DYE: But that doesn't cost
17 demurrage to accrue does it?

18 MR. ATKINS: No.

19 COMMISSIONER DYE: No.

20 MR. ATKINS: No. You're right.

21 COMMISSIONER DYE: Okay.

22 MR. ATKINS: But, I mean, its dwell, its

1 settling containers for many weeks.

2 COMMISSIONER DYE: Right.

3 MR. ATKINS: As for demurrage to accrue
4 it's generally, you know, the trucker has not been
5 in to pick it up. Now I wouldn't put the one
6 paintbrush that they bit off more than they can
7 chew, they may have been stuck at another
8 facility. We are in the tri state area, we have
9 very congested traffic areas so, you know, just
10 getting around northern New Jersey, that can be
11 any number of reasons. So it's generally the
12 trucker not getting in on time. And we can look,
13 you know, when we get phone calls from various
14 truckers hey, you know, this happened, that
15 happened, you kind of know the trucking companies
16 history, if they're good guys you know something
17 happened, you know they're never picking up the
18 phone. You know when somebody has had a true
19 incident that you could work with them on versus
20 habitual, repeat offenders who are constantly
21 calling just, you know, looking for a relief.

22 COMMISSIONER DYE: Okay, thank you.

1 Thank you very much.

2 CHAIRMAN KHOURI: Thank you. Do you
3 have any follow up questions?

4 COMMISSIONER MAFFEI: I do. Thank you,
5 Mr. Chairman. I do want to ask Mr. Crowley and
6 you didn't bring this up in your spoken testimony
7 but I believe I read some treatment of it in the
8 comments from the National Association of
9 Waterfront Employers. Do you dispute that the
10 Federal Maritime Commission has the authority to
11 issue a legislative or an interpretive rule
12 concerning the issues brought up in the petition?
13 Or do you believe we do have that authority?

14 MR. CROWLEY: Well, I believe there is
15 certainly authority. I thought Mr. Butler's
16 answers was probably more educated than I can give
17 you at the moment. I think most of our problems
18 are with the application within the facts that are
19 in opposed here today but I'm happy to get back to
20 you on that answer.

21 COMMISSIONER MAFFEI: Yes, and it would
22 be helpful and I don't want to belabor the time on

1 it but --

2 MR. CROWLEY: That's fair.

3 COMMISSIONER MAFFEI: -- but, you know,
4 obviously we don't want to act outside of our
5 authority. There was at least in the written
6 responses disagreement on that but if we can get
7 that, so that's good. So if we do an interpretive
8 rule, if we at least say offer general guidelines
9 and I did ask a very similar question at the
10 previous panel. You know, if we just denied, you
11 know, whatever egregious practices that we can
12 identify as unreasonable, what is the harm in
13 doing that given that it sounds to me like, you
14 know, most of the time most of your members are
15 not engaging in those?

16 MR. CROWLEY: I would say that I would
17 start with the statement that it's a difficult
18 road from my experience in working regulations and
19 building them. It's a very difficult road to get
20 to the point where you can say clearly that this
21 is the uniform application across the industry and
22 this can be helpful for the industry on a

1 commercial matter. And but it can be done I will
2 grant you that. Not going to argue that point.
3 Difficult road. But then what you get is if
4 you're, if this is my Pillsbury Dough Boy example,
5 you poke in, you're going to poke out someplace
6 else. You are interfering with the commercial
7 applications and the negotiations that are -- that
8 exist where I believe there are knowing and able
9 negotiators and participants in these contract
10 formulations.

11 I give great esteem to the cargo
12 interests, to the carriers, to our colleagues here
13 on the table to do a good job and to solve these
14 problems. And they if they make a mistake can fix
15 the problem the next contract. If you push in at
16 the wrong spot where it comes out where you didn't
17 intend it to, it's a little bit more of a
18 challenge for you to do that. And this is where
19 the commercial system works. As a formal
20 regulator that did a lot of this.

21 COMMISSIONER MAFFEI: Yes.

22 MR. CROWLEY: It was always a happy to

1 do a basic industry wide regulation that executed
2 a statue. It always made sense if you had a
3 federal purpose to specifically, you know, guide
4 and stay away from danger. But those cases where
5 you started becoming involved in the commercial
6 system they were difficult, number one, and they
7 never seemed to work out well and we ended up with
8 a series of directions afterward to change it
9 because we didn't make somebody happy. And I just
10 offer that as --

11 COMMISSIONER MAFFEI: Yes.

12 MR. CROWLEY: -- the explanation for my
13 --

14 COMMISSIONER MAFFEI: Your point is well
15 taken and thank you for your service, Admiral, in
16 the Coast Guard. I do want to follow up though a
17 little bit. Correcting in the contract makes
18 sense but do you, most of the time the shippers
19 don't have direct contracts with the MTO's. They
20 have contracts with the carriers, you have
21 contracts with the carriers. So in that, in those
22 instances since there aren't direct contracts it

1 makes it more challenging to negotiate these
2 things out under contact. Again look I don't -- I
3 completely understand your answer given that I'm
4 giving you a theoretical question like well what
5 if we did these guidelines and said these things
6 are unreasonable. And maybe we would, you know,
7 you don't know what we would say is unreasonable.

8 MR. CROWLEY: Right.

9 COMMISSIONER MAFFEI: But still there
10 would have to in order to actually enforce it you
11 would have to go through an adjudication process
12 just as you do now and I think you said if I'm --

13 MR. CROWLEY: Right.

14 COMMISSIONER MAFFEI: -- that that was a
15 good thing to have. So if we are just sort of
16 clarifying what, you know, what generally, it's in
17 general terms, you know, made sense to us but we,
18 you know, we are not tying the hands of any
19 administrative law judge or even ourselves on
20 appellate matters, what would be the harm in that?

21 MR. CROWLEY: So first of all, you
22 certainly have authority to make interpretive

1 rules. No -- I'm not going to dispute that. The
2 question is do you want to? The first part of the
3 question is I have not as -- I don't accept as
4 quickly that the cargo interests can't influence
5 the result on the terminal surface. I just don't
6 see that in reality. I see next that at least in
7 the way the petitioners couch their relief and you
8 may form a different fashion of relief that not
9 only was there an interpretive guidance offered
10 and I'm not sure that I heard that when I read
11 their petition but I hear that today. But in
12 their petition it was clear to me that what they
13 also did was shift the burden of bringing that
14 litigation or that dispute resolution to the LAJ
15 -- to the commission to wherever the remedy should
16 be found.

17 COMMISSIONER MAFFEI: I'm sorry to
18 interrupt but by shift the burden you mean you
19 would have to prove that it's reasonable or not
20 unreasonable as opposed to them having to prove
21 that it's reasonable, is that what you mean? I'm
22 trying to clarify what you mean. I'm not trying

1 to put words in your mouth.

2 MR. CROWLEY: No, I think that's a fair
3 statement. Their, the burden has now shifted and
4 these guys are going to have to go in and say this
5 was a controllable event by the people and they
6 don't have the proof of that. The people who have
7 the proof as to whether the truck was on the place
8 on the time aside from the RFID kind of situation
9 exists someplace else. And they can bring the
10 proof that we did everything that we were supposed
11 to do and we couldn't get out the gate.

12 Now that avoids the question yet to be
13 raised of if there is no one at fault and if you
14 listen to the petitioners presentation, if no one
15 is at fault they are certainly not at fault and
16 then these guys are on the hook. And that is
17 their choice it seems to me that if they want to
18 waive demurrage because the trucker, because the
19 shipping interest wasn't at fault they should be
20 able to do that. But they shouldn't be told to do
21 that. So that, so, I mean, there is a couple
22 different parts to this. I kind of parse out.

1 MR. ATKINS: It's a tough rabbit hole to
2 go down, you know, you're taking a quantitative
3 problem and trying to layer qualitative kind of
4 process to adjudicate it. To John's point, don't
5 underestimate the influence that a BCO or a
6 shipper has on a terminal. I mean, first of all
7 they do have the, they do have the option of going
8 and dealing with their carrier who the terminal
9 does have the relationship with. And the carrier
10 can step in on their behalf but as I spoke earlier
11 there is a lot more instances where the MTO's have
12 relationships now with the shippers. You know,
13 and the first 32 years that I was in this
14 business, everything you heard at contract
15 negotiations between the carrier and the MTO was
16 marine productivity, marine productivity. Now
17 last year through all the alliance negotiation I
18 heard it twice. It's all about land side
19 productivity, land side productivity. And
20 carriers now when they are selecting their
21 terminals are saying will you be able to get my
22 freight out quickly? Because if you can't I won't

1 have the freight and I can't fill my ship. So
2 don't underestimate the influence that the BCO has
3 on the MTO through the carrier.

4 MR. DeNIKE: And again I want to make
5 sure that that's understood. At every one of our
6 terminals we have a customer service department
7 with anywhere from four to eight people. That's
8 all they do is talk to BCO's and truckers every
9 day. So for them, for a BCO or a trucker to say
10 they have, you know, no relation with us is just
11 mind boggling to me. Now do they have a signed
12 contact with us? No. But do they call us, do
13 they talk to us on a daily basis? They send our
14 people fruit, candy, Coke, whatever they want to,
15 you know, to try to get them working together and
16 that's -- so I don't understand why anybody is
17 saying that they don't have relationships with us.

18 COMMISSIONER MAFFEI: Good. So one last
19 question and it has to go to Mr. Crowley. So
20 there is a little bit of confusion, I think, and
21 these are two and correct me if I'm wrong but you
22 were independent, you were not owned or at least

1 not substantially by any carrier line. But there
2 are many MTO's that are substantially owned by a
3 carrier line. That may be part of the confusion
4 and I guess I just want to give you an opportunity
5 to address that. Is part of this that if a
6 carrier owns a substantial amount of an MTO, does
7 that complicate things? Is the MTO really able to
8 act independently and, you know, and have its own
9 relationships with BCO's from the carriers?

10 MR. CROWLEY: I would say the, within
11 some limitations the Marine Terminal Operator acts
12 independently. Now I'm not sure that any MTO acts
13 completely independently of the carrier that is
14 paying their bills. So let's, I mean, let's start
15 at where the starting point is here which is
16 everybody has an influence on the person they're
17 paying. There probably is more influence in terms
18 of procedures, there are going to be different
19 practices in terms of, you know, which demurrage
20 is going to be more or less. And but those, all
21 of those things should be clear in my experience
22 at the time the negotiation of their original

1 cargo contract.

2 You know you're signing up with a vessel
3 that's going to end up at a vessel owned terminal
4 where the answer is going to be different than it
5 would be. And the same so if you had added a
6 service contact or something at all. I mean,
7 there are various differences as you go around the
8 country that are just clear and you can draw some
9 stereotypes but there are just differences.

10 CHAIRMAN KHOURI: I thank this panel.
11 It's been, I was generous with time. We had
12 enough time and appreciated the petitioners
13 themselves I had asked if seeing how they went
14 first, they've had an opportunity to hear this.
15 It is their petition if they would like to again
16 come up and have the opportunity to respond. So
17 what I would like to do again thank you so much
18 and thanks to every one of the panels but without
19 taking a break, you know, we are right on the edge
20 if we can is, Karyn, are you all going to be too
21 long? What do you think?

22 MS. BOOTH: Yes, we will be very very

1 brief.

2 CHAIRMAN KHOURI: Take, you know, take
3 your time but I think it would be easier to rather
4 than take a break and come back to let's just
5 shift right here and give the petitioners a -- the
6 floor is yours.

7 MS. BOOTH: Commissioners, thank you
8 very much. As we indicated we will be brief here
9 on a very quick rebuttal. I guess I would just
10 start by saying yesterday you indicated there may
11 be some additional written questions that come our
12 way and there was one or two issues specifically
13 that we planned to follow up in writing on as
14 well. But having sat through the testimony today,
15 we wanted to cover just a few additional points
16 and of course if you had additional questions we
17 are happy to answer those.

18 Number one, listening to the carriers
19 and terminals today we would be led to believe
20 there is just no problem here. I think
21 Commissioner Maffei, you know, nothing to see here
22 as you said, move along, all this gets resolved

1 and essentially what you are hearing are simply
2 just kind of one off exception situations. That's
3 just simply not the case. I think that you have a
4 petition filed by 26 organizations, it's not one
5 company, it's not one trade association, its 26
6 organizations, multiple industries, multiple
7 commodities, over 100 comments filed in this
8 record. And American businesses don't hire
9 Washington lawyers, take time out of their
10 businesses to come to D.C. to appear at a hearing
11 unless it's serious and there's a real problem.

12 And so with that I think again,
13 Commissioner Maffei, you said there is clearly a
14 disconnect here and we would indicate that when
15 there is a disconnect between industry and
16 industries just seeing a problem in two very
17 different ways that that is precisely the time
18 that the regulators needs to step in and help
19 industry solve this problem. And so that's I
20 guess first.

21 Number two, the carriers in particular
22 claim there is vigorous competition here. That

1 fixes everything, they're doing everything they
2 can to keep their customers happy and we don't
3 doubt that they try to do that in a number of
4 cases of course. But there is other forces at
5 play here which is why the commercial market isn't
6 working to solve the problem. The most obvious
7 one of course, leverage. We heard about that.
8 The small and midsize guys just can't get the
9 terms on free time demurrage detention in their
10 contracts. But even the very biggest of the big
11 came before you to say in some markets, in some
12 places there is inadequate completion, we can't
13 get what we need.

14 But the very real problem, probably the
15 most important aspect of this is the structural
16 one. It's that the shippers and the drayman are
17 negotiating with the ocean carriers and not with
18 the terminals and we heard it directly from the
19 parties here today. They have no contractual
20 privity with the BCO's. The carriers in some
21 respects are in the middle. It's a tough
22 situation. The shipper comes to them, we have a

1 problem, this isn't fair, we need to mitigate.
2 They have to go back to the terminal who has its
3 own tariff who you heard today is enforceable in
4 most cases especially when it's clear and that
5 puts the carriers in a bind. They're going to
6 have to pay the demurrage to the terminals. That
7 makes it difficult for them to fix the BCO
8 problem. Sometimes it gets waived, sometimes it
9 doesn't. It's very confusing and inconsistent and
10 I think we heard that today.

11 So again the commercial solutions alone
12 can't fix the problem. Commissioner Dye, you read
13 some tariff language into the record that are
14 current tariffs that are in existence and you
15 compared that to the proposed policy statement and
16 even noted that those existing tariffs are broader
17 in some respects than the policy statement itself.
18 And thinking about that and our view on that is
19 aren't existing commercial practices by some
20 carriers and terminals a good indicator of what
21 may be reasonable? Doesn't that provide at least
22 a good starting point for consideration?

1 And the coalition is not asking you to
2 break new ground here. We don't want to create
3 new obligations and requirements that are going to
4 make things more complicated make things less
5 efficient, completely the opposite. But we do
6 think those existing tariffs from good actors are
7 a reasonable indication here of where we might
8 look to see what some good actors are doing and
9 how that maybe could be encouraged to be done to a
10 greater extent.

11 And fourth and finally, I do have to
12 disagree strongly with my friend John Butler on a
13 couple points. On some of the legal issues we
14 will follow up in writing not to belabor things
15 here. But on another point we just disagree
16 strongly that all of you and the staff at this
17 agency can't figure this out. He noted that the
18 lack of cases, the lack of litigation, the lack of
19 precedent means you have a very high risk of
20 getting it wrong if you act proactively.

21 We disagree. We are confident you can
22 get it right and you can provide some clarity to

1 industry as to what is unreasonable with respect
2 to demurrage and detention practices. And we
3 really do strongly believe that this guidance will
4 help industry resolve disputes more on their own
5 given the confusion that currently exists. It's
6 not overly complicated, the shipping act does give
7 you this authority to help fix these unfair
8 situations and with that we just strongly urge you
9 to adopt the petition and move this forward and
10 issue guidance to industry to help solve the
11 problem.

12 I'll say thank you very much for holding
13 these hearings, we really do appreciate the
14 opportunity. I think we all learned a lot over
15 the last couple of days and we are happy to answer
16 any additional questions.

17 CHAIRMAN KHOURI: Well, thank you for
18 appearing not once but twice. I hope you
19 appreciate that out of a sense of fairness that to
20 give you as the petitioners a chance to wrap up.
21 There is as so many things in life a glass half
22 full, half empty, et cetera. I won't but, you

1 know, I do, you know, as I perhaps suggested
2 earlier and anything I say please I do have as
3 open a mind as I could possibly have and very
4 honestly trying to sort through, you know, what is
5 the right thing to do here.

6 COSCO, I mean, I was interested if I may
7 just comment that with all of the incoming
8 inquiries that we had and we are obviously in a
9 position to really have at least a finger on that
10 particular pulse of Superstorm or Hurricane Sandy,
11 some of the other issues. Well obviously before
12 that the labor problems on the West Coast, others
13 that our great people in CADRS were bouncing
14 between pillar and post trying to work on things
15 and it was actually the question didn't come into
16 mind until a witness brought it up of all of the
17 sequence of hurricanes and we didn't have a
18 repeats of that and it was like has the industry
19 learned something here? You know, it's -- is it
20 better? Not perfect, not was it -- but have
21 processes gotten more efficient as we worked
22 through that?

1 And the COSCO tariff issue of, you know,
2 reasonable good actors, et cetera I'll put it this
3 way and I don't mean to try to be over rhetorical.
4 I don't think you mean to suggest that lets pick
5 that and somehow or another now have the
6 government come in and impose that particular
7 tariff on the whole industry but again it would
8 appear that competition always slow perhaps to
9 respond but that the market place is responding,
10 perhaps not as efficiently but so I will stop with
11 that for just and I will turn to my colleague. I
12 will have a couple of observations at the end of
13 this. Thanks.

14 COMMISSIONER DYE: No, thank you. I do
15 have a couple questions for the record, more
16 technical questions so thank you very much.

17 CHAIRMAN KHOURI: Commissioner?

18 COMMISSIONER MAFFEI: Thank you, Mr.
19 Chairman, Commissioner Dye. I don't think I have
20 any questions. I appreciate you coming back and
21 obviously, you know, the record remains open.
22 Madame Secretary, will you clarify how long the

1 record is open for?

2 MS. DICKON: Through next Friday the
3 26th.

4 COMMISSIONER MAFFEI: For all sides so,
5 you know, that I don't want to make anybody feel
6 that there aren't lasticks here. I do believe
7 that we, you know, I do believe and I believe we
8 have established here that the commission does
9 indeed have the authority to issue a legislative
10 or an interpretive rule and to certainly has the
11 authority to respond to this petition. Now the
12 question is should we? That is something that
13 I've not decided on whether or exactly how but I
14 am very confident that working with my, that with
15 the acting chairman and my other distinguished
16 colleague we will be able to figure that out.

17 We are going to continue to take this
18 very seriously. We are looking and talking to as
19 many people, I'm going to be in Dallas and Houston
20 next week talking to interests on both sides as
21 well so, you know, clearly I guess what I want to
22 say is sort of to compliment everybody. This I

1 think has been a great two days of hearings. I
2 have done my best to ask difficult and challenging
3 questions of all sides and I have to say I feel
4 that they really were answered well by all the
5 panelists and I don't, you know, and in terms of
6 the process and, Mr. Chairman, I do appreciate
7 your liberal enforcement of the clock and both you
8 and Commissioner Dye asked some really excellent
9 questions.

10 So, you know, in a world where people
11 are becoming cynical about governments and
12 governments interaction with the public, I feel,
13 you know, both us, our staff of course and the
14 shipping public and interests have really
15 responded well so I'm -- because of that I'm very
16 optimistic about this process. I can almost
17 guarantee that no one will be completely happy but
18 I do think that it's been a very good process and
19 I want to thank you again, Mr. Chairman, for that
20 and for recognizing me.

21 CHAIRMAN KHOURI: Thank you. A couple
22 of observations. The last two days to the extent

1 we thought we understood how the businesses
2 worked, I find every day I learn a little bit more
3 about a piece, a corner of the marine business.
4 Of course I just started in 1971 and I hope to
5 continue living for many years and I will keep
6 learning. A colleague of mine long past, a pilot
7 of some repute, one of his many, many sayings for
8 every complicated situation someone comes up with
9 one single answer and it's almost always wrong.
10 So says pilot Mark Twain.

11 A more contemporary business writer
12 probably the dean of all business men, Peter
13 Drucker, says when you are faced with a situation,
14 a problem, the first thing you have to decide is
15 is it systemic or is it episodic? If it's the
16 first deal with it and deal with it properly. If
17 it's the second leave it alone. That's great for
18 private business. I think are we in a situation I
19 think playing off of what Commissioner Maffei just
20 said, are there some places in between that we
21 need to seriously look at? Where do we with a
22 judicious hand step in and try to make things

1 better, recognizing that we are not going to be
2 able to solve all problems in this particular
3 area. Its -- if nothing else not to complain but
4 it is going to be a difficult choices as we move
5 forward.

6 I can assure you we have already had a
7 discussion blessed by our general counsel that as
8 soon as the record is over or closed, excuse me,
9 we plan, the three of us plan to have a closed
10 session and make decisions as to next steps as
11 promptly as possible so this will not just be a
12 lingering issue.

13 Last, I have thanked several times the,
14 all of the witnesses. For those of you who have
15 been involved in these kinds of hearings I'm sure
16 you would appreciate how much staff time it takes
17 to successfully accomplish these and I want to
18 just make a special comment for the Federal
19 Maritime Commission staff, many of them here, many
20 of them still upstairs doing their job, how much I
21 personally appreciate all the hard work and I know
22 that Commissioner Dye and Commissioner Maffei

1 share that praise. So unless someone else wants
2 to raise their hand and ask another question, I
3 will adjourn these hearings. Thank you.

4 (Whereupon, at 4:00 p.m., the
5 HEARING was adjourned.)

6 * * * * *

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 CERTIFICATE OF NOTARY PUBLIC
2 DISTRICT OF COLUMBIA
3 I, Carleton J. Anderson, III, notary
4 public in and for the District of Columbia, do
5 hereby certify that the forgoing PROCEEDING was
6 duly recorded and thereafter reduced to print under
7 my direction; that the witnesses were sworn to tell
8 the truth under penalty of perjury; that said
9 transcript is a true record of the testimony given
10 by witnesses; that I am neither counsel for,
11 related to, nor employed by any of the parties to
12 the action in which this proceeding was called;
13 and, furthermore, that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties hereto, nor financially or otherwise
16 interested in the outcome of this action.

17

18

19 (Signature and Seal on File)

20 -----

21 Notary Public, in and for the District of Columbia

22 My Commission Expires: March 31, 2021